

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is captured live captioning, formatted and unedited, of the last meeting. The official record of each meeting, the meeting minutes, is usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at www.courts.ca.gov.

>> The meeting is now in session. This is the start of today's meeting and we will return later this afternoon at approximately 4:10 p.m.; that's for the presentation of the Judicial Council Distinguished Service Awards for 2013, and we will meet in the lower level the building. Tomorrow, we will reconvene at 8:30 a.m. for the second part of our business meeting agenda. As always, I remind council members that our meetings are audiocast live with real-time captioning on the California Court's website, and portions of our meetings are taped for view later on our website. For the benefit of the online audience, please speak into your microphone and name solicitors and real-time captioning leaders can follow the discussion of council. Before we begin our regular agenda, what I wanted to talk a bit about was the December Judicial Council meetings and the importance of them. This meeting shows the volume of judicial branch issues both large and small that are regularly addressed by the Judicial Council. Apart from being the last meeting of the year and midway through the current fiscal year, this meeting also is where we review and approve the council's legislative agenda for the coming year. This is also an opportunity to honor and recognize excellence and accomplishments of our peers, colleagues, and partners with their Distinguished Service Awards. Planning for future judicial branch advocacy, looking back on the public service contributions of individuals in and for our justice system, and deliberating and acting now as we will today and tomorrow on our agenda items ensures the ongoing strength of our branch as an independent, coequal branch of the state government from the original measure that created the council of the language, quote, "It would be the duty of the council to propose a remedy and if this cannot be done without an amendment to the laws of the council, council will recommend to the Legislature any change in the law it deems necessary." This advocacy that I refer to has been enhanced over time and during this first year of the two-year legislative session 2013–2014, the Legislature and the government enacted numerous bills that affected the courts and were of general interest to the legal community. Our Office of Governmental Affairs provided a summary of court-related legislation in November. So itemizing the measures of greatest interest by subject matter, that summary contained information on 93 Assembly bills and 56 Senate bills. There are 18 subject matter areas covering everything from judicial administration and domestic violence, to probate and traffic. The summary sheds some light on the volume of our work to be reviewed often under tight timelines for our internal policy coordination and review committee and we thank you Justice Baxter and Judge So for your timely work on legislation and also our Office of Governmental Affairs, Cory and Laura. Speaking to these Distinguished Service Awards, great work should always be recognized and later today we will present six individual awards that exemplify the strength of leadership and have improved the administration of justice statewide. I am pleased to note and acknowledge that past Distinguished Service Award honorees currently sit on the Judicial Council: Senator Evans from 2011, Mr. Fox from 2009, Judge Herman from 2003, and Judge Jahr from 1997.

>> I was in high school then.

>> So Rob, you were slow to graduate?

>> Thank you, Jim, obviously they remain committed to improving the administration of justice. We also have a number of past honorees among our staff: Jodi Patel, Curt Child, and Diane Nunn. When we present these awards, we will also present another award that has become an important tradition and a valued partnership for the judicial branch, and this is the Aranda Access to Justice Award. This award is named in honor of the late Benjamin Aranda III. It also enables us to co-sponsor with

California Judges Association, State Bar of California, and the Commission on Access to Justice, and it is an award that honors those who improve access to justice for all as a key goal for our counsel and as a fundamental aspect of Access 3D. Tomorrow, one of our presenters is a past honoree. In conclusion, before we officially start our meeting today we would like to take this opportunity to personally and publicly thank you the Judicial Council members for accepting the responsibility of an additional workload of what I know is a second job and that is to review, deliberate, concentrate, take action on important issues relating to the statewide administration of justice, and thank you also to the 400-plus volunteers from the appellate and state court, State Bar, justice system partners who do contribute on an ongoing basis to all of our internal and advisory committees, task force workgroups, and commissions. As you know, our research distills complex issues, makes recommendations for us to consider, comment, discuss, very often amend, and ultimately make a decision; all ably assisted by our hard working staff. If I do not get a chance to say this, thank you all and happy holidays to you and yours during this season.

>> The first order of true business is the approval of the minutes. This is for the October 24–25 meeting. Do I to hear a motion for adoption?

>> No discussion, all in favor please say I.

>> The next item on our agenda is my regular report as chief to the council summarizing my engagement in ongoing outreach activities since October 25. I start with the justices of the California Supreme Court, Judge Baxter, and myself we continue our regular outreach with members of the Bar Association when we ride the circuit. We do this between San Francisco, Sacramento, and Los Angeles. We were particularly pleased to return to the Sacramento court, the home of the [indiscernible] building for November 5 and 6 for the first time since 2009. Coincidentally and happily, Justice Moss' son, Justice Richard Moss, was assigned [indiscernible] 24 cases based on the list with no particular attempt. While in Sacramento, the Supreme Court attended two receptions: one hosted by the Federal Society and the other by the Women Lawyers of Sacramento honoring the courts return to the city. In San Francisco, the justices and myself attended 66 annual lawyers club luncheon of San Francisco. It's the Supreme Court lunches and in Los Angeles when we were there for all argument we attended the annual Chancery Club luncheon and so many of you and the Italian-American Lawyers Association dinner. The Bar Association's attorneys and lawyers continue to be very supportive of our advocacy efforts to achieve a reinvestment in our judicial branch and very supportive of the trial courts. I will return to our Sacramento courtroom. It also provided us with another opportunity to partner with the California [indiscernible] to broadcast all arguments live and to stream them over the Internet. I know Frank Maguire and his staff and the clerk's office all plan to expand the use of technology and our HD cameras to access to all argument next year. I was pleased to be able to continue to focus attention on the area of public interest law by meeting with students, faculty and lawyers at Stanford Law School. I attended their 11 centers Faulk Public Service Award and at the University of San Francisco Public School of Law where we attended a public interest law foundation award and they wanted me the [indiscernible] award this year and I accepted on behalf of the work of the Judicial Council. We also went on a visit to Washington, D.C. for the annual Rehnquist award, Judge Baker, Judge Jahr, myself in the meeting of the conference of the board of directors in which I service as the member for California and also we took the opportunity to meet with Associate Attorney General Anthony West of the United States Department of Justice to discuss our shared interest in language access and issues of language access in California. I've also had meetings with our sister branches of government, including Governor Brown, the new [indiscernible] returning back to the West Coast after spending considerable time in Washington D.C. come a college or student of Frank Maguire at Stanford Law and answer the opportunity to join with Assembly Member Jimmy Gomez in his [indiscernible] to talk about important work and accomplishments. The government also made 18 up with Mr. The Superior Court and 10 judges in Los Angeles from his last run of appointment and I know we will hear more later on the need for

additional judgeships and our discussion agenda tomorrow. Approximately 260 appellate judges, lawyers, and staff attorneys from throughout the United States at the Appellate Judges Education Institute in San Diego. At approximately 400 judges and lawyers here in San Francisco, many of us here today, Judge Jerry Jackson is also there and Cheryl Corgan and many others from California benches who sit on the board of the Northern California chapter of a BTL, Association of Business Travel Lawyers, and I had the great pleasure of sharing the podium and meeting once again with Sandra Day O'Connor at this event. In Anaheim, I was able to attend two important events that are always successful: annual be on the bench conference and, acting as a convener role, we convened the first summit ever of its kind in California about keeping kids in school and out of court. Superintendent of Public Instruction Cory Littleton attended, Attorney General Harris, Secretary of Health and Human Services Agency Diana S. Dooley, Senate President pro Tem Darrell Steinberg, and Assembly Member Roger Dickinson among others attended. I also wrote an op-ed on the topic for the *Orange County Register* and finally most recently involving the media. I had my annual Meet the Press opportunity with 12 journalists that regularly cover the judicial branch, the court, and legal issues. We had a wide-ranging discussion with topics from budget to the death penalty and tasted Peter Allen's homemade cookies, and I was also asked to speak more slowly during oral arguments. That concludes my report.

>> Now we will hear from Judge Jahr and the administrative director's report.

>> The written report you have in your meeting materials provides a summary of the activities, programs, and services in which the AOC is engaged in service to the council and the courts since the council's last meeting. I would like briefly to add to the Chief's comments regarding issues Beyond the Bench conference in Anaheim. The success of the conference is attributed to the broad vision of the branch to ensure procedural justice and to improve outcomes for the most vulnerable individuals and groups in our society. It's also attributed to the leadership and staff of the Center for Families, Children & the Courts, Diane Nunn, and [indiscernible] for their outstanding commitment for developing and broadening the scope of Beyond the Bench over the last two decades to make it the largest multidisciplinary conference of its kind in this country. As with all such efforts, it takes talented, skilled, and committed individuals dedicated to public service to make it happen. This afternoon, in a deviation from a usual report, it is my great pleasure to recognize two such individuals who are retiring from public service with the Administrative Office of the Courts this month and to present them with the resolutions of commendation of behalf of the Judicial Council and the administrative office. Today is the last meeting at which the Judicial Council will have Nancy Spero leading this meeting's proceedings and as head of Judicial Council Support Services. Nancy is retiring after more than two decades of public service. Following her move from the Legal Services Office, for nine years she has done a tremendous job in supporting the Judicial Council in terms of its governance and business meeting processes. Nancy works closely with the Executive and Planning Committee, with Justice Huffman as chair and not just Justice Miller as chair. Throughout this time, she has with great professionalism managed all aspects of the administration of Judicial Council and E&P meetings, assisted AOC staff in having well-prepared policy issues prepared for council meetings, managed the nominations and appointments process for the council and its advisory groups as well as the new Judicial Council member orientation among many, many other duties. It was said yesterday evening at the reception in her honor that when things are operated well and organized thoughtfully they go smoothly, and when things go smoothly people don't notice and so many ways it was easy not to notice the excellence of Nancy's service because Nancy administered the procedural side of council meetings that required grace which so typifies and so becomes selfless public service. So Nancy, we are in your debt. The Judicial Council and the public we serve have benefited by your fine service. We wish you and Norm every success and happiness in the future. If I could have come forward we would like to present you with our resolution.

>> [Applause]

>> Thank you all. It has really been a privilege to serve the Judicial Council these many years and to help you in making it work for you to make good policy decisions. We all care about the justice system in California; that it's fair, and open, and accessible to the people of California; and each of us tries to contribute in a way that we can and that's what I've tried to do. Thank you.

>> [Applause]

>> I might add that I had a double loss with Nancy retiring because not only did she serve the Judicial Council with distinction she also served my condo association [Laughter] with distinction.

>> [Applause]

>> It wasn't in my script. I'm on a roll. At the end of May, Mary Roberts shared with me her plans to retire following 13 years of public service with the administrative office, the last six as chief counsel to this body. In her role as chief counsel, Mary has overseen the provision of a range of first-class legal programs and services to improve the statewide administration of justice and benefit the public we all serve. As an attorney-at-law for 32 years, Mary joined AOC in 2001 after 20 years in the private practice of law. She first served as supervising attorney to lead the newly-established labor and employment unit of what is now the Legal Services Office to meet the broad labor and employment law needs of our branch. She was subsequently promoted to managing attorney, and then assistant general counsel, and then general counsel in 2006. Mary has worked closely over those years with the Judicial Council, with trial and appellate court leaders, with the administrative office, and with other justice system partners to provide high-quality effective legal services for the branch. Under her leadership, Legal Services Office has been recognized for its excellent advice and representation in the areas of litigation management, court administration, labor and employment, transactions and business operations, real estate, of course support of the Judicial Council, direct support of eight of its advisory committees, and indirect support of many others. The council, AOC, and the courts are truly fortunate to have had the benefit of Mary's great experience, her tremendous knowledge of the law, and her expert legal analysis. I know, in my own house, knowledge problems have arisen which we never needed to bring to your attention because we had someone like Mary, and she and her fine colleagues assisted us in sorting them out and resolving them in an appropriate way without maturation into something that warranted the council's concerns. I can tell you that the wise counsel that we received from Mary is deeply appreciated indeed. The resolution which will be provided to Mary in a moment contains a final paragraph which I would like to read. NOW, therefore, be it resolved that the Judicial Council of California and the Administrative Office of the Courts commend the achievements of Mary M. Roberts and express our pride in and sincere gratitude for the standard of excellence she established for service to the judicial branch during the period of unprecedented judicial reform and expanded the court services to the people of California and for her leadership of the Legal Services Office and recruitment and development of talented staff who will perpetuate her standard of excellence long after her retirement. We join together in wishing her every success and happiness for the future. The resolution is of course signed by our Chief on behalf of the council and by myself on behalf of her colleagues at the Administrative Office of the Courts. Before inviting Mary to come forward, for those of you who may not know, she is from Hawaii and over the years I'm told the staff celebrations at the Legal Services Office have featured Hawaiian themes reflecting her rich heritage, and I'm happy on behalf of the Judicial Council [indiscernible].

>> [Applause]

>> Let me take one moment and say my comments from this spot because I'm so comfortable from this position as opposed to in front of the seal. It really has been my privilege to serve the public through your staff agency, the Administrative Office of the Courts, and to work with council members, and presiding judges, and court execs, and our justice partners, and especially with the talented and dedicated staff of the Legal Services department, and with all the offices of the AOC. Shortly before I joined the AOC, the council had tasked the AOC's legal department with providing comprehensive legal services to the trial courts and building the capacity to do that has been very challenging but also very rewarding both professionally and personally, and I really appreciate having had that opportunity. Over the years, AOC has taken on new challenges and new responsibilities. It has been exhilarating for the Legal Services department to provide support necessary to overcome those challenges and to do what the council had directed us to do. Just one example is the George Deukmejian Long Beach Courthouse, the opening of which was recently celebrated. I was congratulating the AOC project manager about that wonderful new courthouse the other day and joked with him, and this is the first public-private partnership in California, if not in the U.S., in terms of building a new courthouse, and so I was joking with him that when people come to that wonderful new courthouse, what they don't say is what fantastic legal work [Laughter] and fantastic other work behind the scenes are so important and necessary to accomplish these things. So working mostly behind the scenes is what your lawyers do, and I've truly enjoyed the opportunity to lead the legal department these many years and I'm so pleased to pass the baton to Debbie Brown who was here before I came and, as Judge Jahr said, keep supporting the ongoing efforts by our legal staff and all of the staff of the AOC, again thank you so much for your recognition. [Applause]

>> Thank you.

>> That concludes my report, Chief.

>> That was a.

>> Tackler report. Next we will hear from Judge Kenneth So for policy coordination.

>> The committee has met twice since our last council meeting. We've continued our conversation on council-sponsored legislation. At the November 14 meeting, we have recommended council-sponsorship of six legislative proposals and in addition to these proposals the council's 2013 legislative summary adopted on their October meeting from items B through [indiscernible] in the council's agenda. Item T are the legislative priorities recommended for 2014. Additionally, we met this past Tuesday and we discussed allowing courts the discretion to provide interpreters in civil cases and that proposal will be before the Council at the beginning of the year. That concludes my report.

>> Thank you Judge So.

>> Next we will hear from Justice Miller.

>> Thank you, Chief. The primary role of Executive and Planning is to set the agenda for each of our Judicial Council meetings as well as to oversee certain tasks that are delegated to us by the council. We've had a number of meetings in that regard and that has resulted in the meetings in the agenda that we have for today and tomorrow. We also met jointly on October 24 with RUPRO and the tech committee, and at that meeting we approved draft rules for various new and continuing advisory committees. Those are now out for public comment and you or others may comment until December 20th. Those are the Court Facilities Advisory Committee, the Trial Court Budget Advisory Committee, the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch, the Access and Fairness Advisory Committee, and the Court Executives Advisory Committee. My report will be posted online after our meeting today but there are three other matters that I would like to take discretion to also highlight. As you know, I've been working with four other chairs of our internal committees, Justice Hall, Judge So, Judge O'Malley, and Judge Herman, to put together a draft of an open meetings rule. We've had many meetings and I want to stress, many, including one this morning to discuss how we can balance the need for transparency with ethical concerns raised by justices, judges, and attorneys who actively volunteer on over 35 advisory committees. Also the comments we received on our preliminary rule have been helpful in formulating the next draft of the rule which will be circulated for six weeks for additional comment. Our goal is to have that proposed rule ready for circulation on December 20. I truly want to thank my cochairs for their wit and wisdom as well as your availability and patience and all of the staff that have assisted in that matter. Also, the Strategic Evaluation Committee provided a great service in identifying governance improvements for the Judicial Council and structural reforms for the Administrative Office of the Courts. Ever since the Judicial Council turned the SEC recommendations into council directives, the AOC staff has come back repeatedly to the council or to Executive and Planning with status reports on the directives and other initiatives. I reported at our last Judicial Council meeting in October about a full-day September meeting we had in this regard and also with the October council meeting on the restructuring of 14 years of Judicial Council delegations to the administrative director. I want also to briefly report on one of these formidable reassessment projects, the essential services review initiated by the AOC executive team in order to comply with the spirit of the SEC and the Judicial Council directives, particularly the first four directives which dealt with governance by AOC by the Judicial Council. This project which I believe is unique for government entities--and a first for the AOC--began in June of this year and is anticipated to continue well into 2014. The essential services review will be a fairly complex and a lengthy multiphase project with the first phase focusing on identifying all of the services provided by the AOC: services to the courts, and for all judicial branch entities, to sister branches of our state government, the federal government, local and national justice partners, community organizations, and most importantly the public. The follow-up phase will encompass a review of the workload and the associated resources that are being used to complete each of the activities with the view to determining where additional resources made be needed. This may require further restructuring and additional guidance from the council to prioritize these activities. Ultimately this analysis will inform the managing and balancing of existing resources in order to most effectively meet the council's goals for the branch and the council's oversight of the AOC's activities. It is clear that this is a work in progress, the next logical step in the reassessment process that began when the Chief Justice appointed the strategic evaluation committee during her first year in office. I want to extend my thanks to the AOC's executive team for taking this initiative and to the AOC management and staff for supporting it. And then finally, Chief, I would be remiss if on behalf of myself and also the E&P members that have served with Nancy Spero over these many years if I did not say a few things. To me, Nancy embodies all that's best about the AOC staff members who I have worked with: incredible work ethic combined with the deep, deep devotion to public service. Like many other senior AOC staff members I've encountered, Nancy had a highly successful career in the private

sector. She was a litigation partner in a Los Angeles law firm, she developed a thriving private mediation practice, she has taught courses in alternative dispute resolution and business law, she has trained attorneys and business executives in negotiating skills. She served in various roles in the AOC and I've come to know her in her role as a senior attorney and lead staff to the Judicial Council Support Services team and most importantly to E&P and me as chair. As those of us on the Judicial Council and its internal committees know, we could not perform functions without the dedicated staff. As the council's oversight role has increased over the last three years, again thanks for the vision of our Chief Justice, we have increasingly relied on the formidable expertise that AOC members like Nancy bring to the table. We still have a lot of work to do—and Chief, you made it clear that the work of reassessment is constant—and I'm sorry that means Nancy won't be here to assist us with this important work. Her wisdom, her creativity, and her problem-solving ability will be sorely missed, especially by me. We have only to look at the quality of her work and the excellence of her effort to remind ourselves of the nobility of what we do and what she did and that's the importance of public service. Thank you, Nancy. Thank you, Chief. That's my report, except I did want to say one other thing too: as sorely as we will miss Nancy, she has a wonderful replacement in Nancy Carlisle who I've worked with and who I admire and has big shoes to fill but will do it ably. Thank you.

>> Thank you, Justice Miller. Next, we will hear from Justice Harry E. Hull, Jr.

>> Thank you, Chief. Good afternoon, ladies and gentlemen. The committee has met twice since the Judicial Council meeting we held on October 24 and 25. The Rules and Projects Committee met by telephone on November 12 to consider two proposals, one of which had been circulated for comment and one that makes only technical changes. The Rules and Projects Committee recommends approval of these items which are item A-3 and item A-4 on tomorrow's consent agenda. November 25 we then met by phone to consider four proposals. The Rules and Projects Committee recommends council approval of three of those proposals, which are items A-2, A-5, and A-6 on tomorrow's consent agenda. And you should note there are pink sheets for item A-6, which is the 2014 Uniform Bail and Penalty Schedules. At that meeting, [indiscernible] declined to recommend council revise restraining order forms without circulating them for comment. The revisions would reflect recent changes in the law that provide that a restraint person has the option of storing a prohibited firearm with a California-licensed gun dealer. Advisory committee directed to work and prepare notice to the court suggesting notice take steps in 2014 to the parties and restraint proceedings in the recent change in the law during the interim period before the revised forms are adopted later in 2014 after public comment. The Rules and Projects Committee met in person yesterday on December 11 and considered 11 rules and forms proposals to submit for public comment during the winter cycle and one proposal making technical amendments which will be presented to the Judicial Council at its April meeting. Most of the proposals circulated are required to comply with or implement recent legislation, and two proposals address Judicial Council directive 79 which asked the Rules and Projects Committee to evaluate relaxation of mandatory education requirements to allow the Administrative Director of the Courts and court officers greater discretion and flexibility in using their workforce during times of budget constraints. Following public circulation and further review by the advisory committees and the Rules and Projects Committee, all winter cycle proposals are expected to come before you—before the council—at that April 2014 business meeting. Later, on December 11, yesterday, the Rules and Projects Committee met jointly as Justice [indiscernible] noted with the Executive and Planning Committee and Judge Herman to consider the 2014 annual agendas on the 11 advisory committees overseen by the three internal committees. The internal committees will meet again in March to consider the annual agendas of the remaining advisory groups. Chief, I will be glad to answer any questions on the report.

>> Thank you Justice Hull.

>> With no hands raised, we now turn to Judge Herman.

>> Technology Committee has been pretty busy since our October meeting. We've met five times by telephone and once in person, and I'd like to talk first about the telephonic meetings because of the way we dealt with a number of prioritization tools that have been created again in draft form by the planning task force. The purpose of this prioritization tool was to prioritize projects aligning with the proposed draft strategic plan, and it will provide a transparent and consistent model for evaluating projects by considering factors including overall return of investment business risk. Alignment with strategic goals is a draft process that we will be working on to perfect, and it's a way again to provide us with a concrete and objective process in terms of project selection that will be reviewable by our internal and external stakeholders for our transparent process. We are pilot testing this evaluation matrix, and we are using it to select the courts to be considered for case management systems and to be considered for budget change proposals that will be submitted to the Department of Finance in February. This request will be submitted to the Judicial Council for review and approval in our January meeting. All 58 courts, by the way, were surveyed in terms of their interest for a budget change proposal approach for replacement of case management systems. Thirty-two courts indicated some interest in participating, with 14 courts actually submitting proposals for committee. The prioritization subgroup of that Technology Planning Task Force participated in all the telephonic meetings to answer any questions related to their creation of the draft project prioritization scorecard. At the November 8 meeting, the committee reviewed information that was submitted by these 14 courts that filled out the project prioritization scorecard as part of the survey to participate in that process for case management system replacement. Judicial Council Technology Committee decided by a vote that Calaveras, Glenn, Lassen, Los Angeles, Monterey, and San Diego courts would be invited to submit additional information and would be asked to present at a meeting to be scheduled. So part of the factor analysis beyond risk 3D Access and so on with the idea that we needed to have representative courts in terms of size as well as representation and geographically from across the state. At the November 25 meeting, the six courts made the presentation to the JC TC and at that November 26 meeting the committee reviewed and discussed the presentations from the day before and, with the ability of staff to support the projects, we approved all six courts, [indiscernible] moderated them [indiscernible] to participate in this pilot for case management system replacement. We want to point out that the last time from initials into survey to the decision was 43 business days. The request from Lake County Superior Court for AOC to support and deploy the proceedings interface with the stand justice position was approved. For the December 12 face-to-face meeting earlier today, the committee received updates on the budget change proposals for case management system replacement, the appellate document management system, and reviewed the court technology advisory committee annual agenda which we voted to approve with certain modifications of the projects and with the additional proviso that as of July 1, after the council has reviewed the recommendations from the planning task force that governance structure relative to SeaTac as well as project Samantha time change that then referred back, and staff is preparing the finalization based upon the vote of the planning task force and of course we will bring that forward for approval by both through RUPRO and E&P.

>> With that, that concludes the report from the Technology Committee and I do want to think our hard-working committee. We put in a lot of time and hours on this project since our last meeting and also think that support that Mark Desmond and his crew always provide to my committee, including Jessica Craven, keeps us organized and on track. So thank you.

>> Thank you, Judge Herman.

>> Next on our agenda, item one is a legislative resolution presented by Senator Evans in recognition of Beth Jay, principle attorney to me, Chief Justice of California.

>> Thank you. Thank you very much. It's a real privilege today to be able to present the Senate resolution on behalf of myself and Senate President pro Tempore Darrell Steinberg to Beth Jay for her 33-year career at the California Supreme Court that has significantly influenced the

administration of justice, having served no fewer than three Chief Justices as principle attorney. She's worked on a wide variety of issues ranging from gender equality on the bench and bar to adequate funding for the judicial branch, which we all know is an ongoing challenge and to providing clear ethical guidance for judges through the Code of Judicial Ethics. Those contributions have been invaluable and she's made a lasting impression on those of us who have been privileged to work with her. We present this resolution from the entire California State Senate in recognition of Beth Jay's distinguished career and express our thanks.

>> Thank you.

>> [Applause]

>> Thank you. All I can say is I think I've had probably the best job in the world which is probably why -- but I've been so fortunate over the years to work with such extraordinary people and with the Judicial Council, with remarkable men and women over the years who have dedicated themselves to the administration of justice and for the betterment of service to the public. I can't tell you how wonderful it's been in the extraordinary staff who over the years have gone above and beyond to make things happen that really affect the people of our state and I am so honored to be part of the judicial branch and so honored for this recognition. Thank you so much.

>> [Applause]

>> I should add that Beth flunked retirement in large part because it think she was speaking about it in my second year as Chief Justice, and she stayed on to handle the number of issues that are incapable of definition after whom should be shepherding the issue through either the Legislature, the State Bar, the ethics committees, in the numerous state organizations that exist including bridging many difficult subjects between myself and issues that have to be formed and clarified with media and across the board just a number of -- if you don't know who to send it to, give it to Beth. And she's ably served with humor, and energy, and friendship. And so I am greatly pleased to see this recognition of your work by the Senate. Thank you.

>> [Applause]

>> Item two in our agenda this afternoon is the Judicial Council report to the Legislature regarding the implementation of the open meeting rule, excellent but the presenters are internal chairs of the Judicial Council on this action item.

>> They've allocated it to me.

>> On June 14, 2013, the Legislature passed a budget of 2013 and as part of that Budget Act the Legislature added provision 15 requiring that by October 1, 2013, the Judicial Council adopt a rule quote, regarding open meeting requirements for committees and similar multibody members that report to the Judicial Council. Quotation: And 227-2013 Brown vetoed provision 15 but in his veto message urged Judicial Council to continue efforts to provide greater public access to judicial branch committee activities. In addition to the budget bill language, the Legislature also adopted supplemental report language accompanying the Budget Act. This language reported and this language directed the Judicial Council to report to the Joint Legislative Budget Committee on implementation of open meetings will take January 1, 2014. The letter that you have attached to this particular report is our proposed letter to the Joint Legislative Budget Committee on the implementation of open meetings. But what I first want to do was just remind you what language was included in the supplemental report, just going to read it directly. At this quote: not later than January 1, 2014, the Judicial Council shall submit to the Joint Legislative Budget Committee a report on the implementation of an open meetings rule in accordance with the following. The rules shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that refused issues and reports to the Judicial Council picked the rule shall provide for telephone access for requesting persons, the rules shall establish public notice requirements for any meeting of the body described number two, for each fiscal year beginning with 2014 when the 15th up report shall include the will for that fiscal year specific details on amendments to the rules adopted

in the prior fiscal year a November 14, we have what was probably a unique meeting at the capital. We released at that time a preliminary draft which we shared with the Governor's office, the Department of Finance, the legislative analysis, immediate, labor, and other stakeholders. It was an excellent meeting. We received excellent comments for those who participated. We also released this preliminary rule at this time which was something unique for a 20-day comment period. We have been meeting, almost seems like daily, but it seems like every other day working on the open meetings rule, and we met even this morning, and we will have a proposed open meetings rule by December 20, which is within our timeline so that we can release that on that date work and public comment and then, at our April meeting, we will have a proposed rule which we will present to the council for a vote. Before I ask you to approve this letter, I have to thank all of those people publicly who dealt with this because they have been so important, and without them we could not have accomplished what we hope to accomplish. It's Jodi Patel, Pam Reynolds, Debra Morrison, Patrick O'Donnell, Nancy Spiro, Nancy Carlisle, Debbie Brown, Cory Jaspersen, Laura Speed, Sharon Reilly, and Peter Allen, and then also the other internal chairs; they all have been working late in the evening and on the weekends. I appreciate that. I'm open to questions and again the rule is not attached because it is not complete. It will be ready and we plead by December 20. When this letter goes out on January 1, that rule will be attached to the letter.

>> Judge Rosenberg?

>> Regarding the public comment period. You are going to have to public comment periods. One has already happened, correct?

>> Yes.

>> And another one, it's going to start on the 20th so my questions are why—I'm not disagreeing with this—but why did I have to public comment period and secondly how long will the public have to the issues that are asked special to the judicial branch and especially to the judges who sit on these committees and the ethical ramifications we wanted to make sure that we released this in a forum at the capital where this was originated to get their input and also to have the opportunity in some sense to express why we had written it in the particular way we had written it and to explain the unique position that judges are on in these committees. I have to tell you again it was very well attended. Cory and his office did a great job. We did it twice on November 14, in the morning and the afternoon, and both times all the seats were filled and we had a great dialogue and great questions and it went a long way and what they said and what the comments that we received in helping us formulate the rules on December 20. It was invaluable in my opinion.

>> The first comment period also involved our colleagues and committees because we needed and it was hard for us to envision all the different scenarios the committee members are faced with and ethically when they discuss case law etc. where it might pose a problem to them ethically if that meeting were open. So we needed to hear from the chairs of these committees the circumstances under which they might be placed in jeopardy in that regard. It went out also to colleagues and to the committee chairs and also to anybody in the branch. We got letters, and 13 comments, and phone calls. That input was really helpful in continuing to form the rule of court that we were still working on this morning and not to say that more comments that come in, in the second period, will help us as well but it was invaluable.

>> Just as a follow-up, I know probably every member of this council is interested in opening up the process but that's easier said than done. There has to be consideration for subjects that can't be open: personnel issues, litigation, and property acquisition. There are a number of things that necessarily have to be done privately. I imagine that's being considered but also what about this just doesn't affect the Judicial Council and the committees? We are also drilling down to the Courts of Appeal and trial courts or is that anonymous tape?

>> That is not part of this.

>> Okay.

>> And I can add that all the considerations that Judge Rosenberg has just mentioned including many more, we have been working hard to find a balance to this rule and adding to the answers to your first question, that's one of the reasons we also wanted to open the discussion up early on at the regional meetings to get there early and put on all of our colleagues who appear to comment. It was not only unusual but in my experience it had never been done but we felt it was important to get early input from all of those branches and then have a second opportunity for the public and to whoever wanted to comment once the rule was proposed.

>> Judge Ellsworth?

>> Strange question. In so many of our meetings, we do them telephonically and contemplate that and the piece that I think about is how often we shoot e-mails as a part of that and did you [indiscernible] like you said it further complicates [indiscernible - multiple speakers].

>> It takes into consideration circulated proposals in our preliminary rule and we got some excellent comments on how to make that more sensible, and I think they probably were where too that we don't meet that often in person anymore so that's why they talked about telephone access that's to include electronic access and other means.

>> Fortunately, all of us have been involved in many committees and so all of us are aware of those situations if not resolved in person or the one phone conference, we need other information, we need follow-up and we need to put that over for that one brief piece of information and then we can all get it put in that memorandum. E-mails and more correspondence. So believe you me, the scenarios have been almost endless and that's what's difficult about this rule.

>> Every time we meet, we have a discussion about some new revelation that one or the other of us had just awoken in the middle of the night thinking, "Oh my God, what about that?"

>> I just have one thing. When do you think we can get the draft? It would really be good to get it before the 19th. We get it before the beginning of the week except I don't think it's going to be finalized before the 19th at this point, the week from today, and this justice said we're still going through discussions and it's been redrafted as we speak and staff can only move so quickly on this.

>> I will imagine we will be working on it on the morning of the 19th. There are so many facets to it.

>> Justice Baxter?

>> You might wonder consider providing "NoDoz" for those who participate. [Laughter]

>> Do we need a motion?

>> I will say that I think it's a fair statement that we have it. Council endeavored to open up our meeting from the early part—in the last three years or so—and I would say immediately it started with opening up the education meeting which is enclosed for a number of years and I know that Judicial Council we've had discussion amongst the chairs and members of council about waste. Open up our meeting but as has been expressed here I think what's not so widely known in the public is that judges have canons of ethics and the code of ethics that really guides their input, their membership, the communication because as the judicial branch and as the arbiter of facts and law it really requires a judge to be neutral and so when this concept came up, wanting it open meetings rule, we were not opposed to this but it was a matter of we need to draft this ourselves because we have different considerations and especially because the judicial branch has taken far greater oversight of many, many issues that previously we did not necessarily have judicial oversight on, so we wanted to be careful, and we wanted to be inclusive, but we also wanted to make sure that we protected and acted in accord with the canon of ethics. And that's why this report is really a work in progress as more considerations come about and, if they see the hard work of the internal chairs and it's discussed, there are other ways that we have to capture because the branch especially due to contraction of funds we had to hold these meetings differently, far fewer personal meetings, far more videoconferences and non-in person meetings complicates how you keep the meeting or have a meeting that open when recall and I assume it's the same today that within the executive branch the senior staff would meet daily and consider issues, make recommendations that ultimately went to the Governor and those meetings were never public because it which shall the conversation as a matter of necessity and a note that certain meetings with the legislative branch likewise are not public. I think it's important for the rule to be reflective of what the processes are within the executive branch and the legislative branch to reflect the spirit behind us.

>> Thank you. Judge Wachob?

>> Thank you. I would like to echo exactly what Justice Baxter just said. I think we have to be careful not to punish ourselves for doing the right thing. Under your leadership, Chief, we have opened up the branch and we have empowered more and more groups to take a look at issues, the kinds of issues that used to be the product of staff work as Justice Baxter just said but because judges are involved in staff work there's some sense that we have to open up to staff to staff is question. A big we have to be careful to that. Certainly [indiscernible] doesn't leak it -- open up its staff discussion and the local city department doesn't open their staff discussion but simply because members of the judiciary are on an advisory committee there should be a notion that that should be opened up. It's different if it's council members doing council work and that's well covered. We've opened up the council meetings and our group represents and I want to compliment Justice Miller and the other four for opening up the process in terms of soliciting input from the chairs of the various committees work, which had several very active meetings and I haven't seen the most recent draft obviously that the prior drafts are -- each reflect changes from those meetings and the task force and fiscal accountability of which I share and the advisory committee which I chair are supportive of opening up meetings in our branch down to subcommittees if they discussed and decide about the expenditure of public funds to make effective recommendations to do so. Really the ultimate decision is only with this body but the budget advisory committee makes effective recommendations on the

expenditure of funds and Judge Earl and [indiscernible] have opened up those meetings. But when the other advisory committees get together and have discussions on staff issues, I'm not sure that there's any public policy needed that outweighs the chilling effect on open, robust discussion [indiscernible]. As to one of the latest version I saw of the open meeting rule, which is the November version, it talks about open meetings which would include any committee's subcommittee reviewing issues that were reported to the Judicial Council. Now maybe that's been fixed since, but to me that's a trap to fall into because it also could be done if [indiscernible] talks about digital [indiscernible] and says when you're in the council please report on our feelings about governance of technology. Often reporting on what we reviewed, that whole meeting had to be opened up on that work on financial accountability if are talking about whether or not efficiency might be getting e-signature is on probable cause findings, the fact that I might report that to this group, we have no power to affect that change as an advisory committee so I'm not understanding why there is a public need to outweigh the difficulties, the public need has not driven the other staff groups that feed the Legislature or the government open up their discussion. So I hope that but we all know him and are going to embrace the notion of public funds should be decided upon and it spent about only in public forums, there's a lot of other things we do for good reason for which the public is not an appropriate part of the discussion.

>> Angela Davis and then Senator Evans?

>> In addition to the comments about a chilling effect and whether I think in some instances it might be debatable whether the public has an interest in a particular issue, however, I tend to agree with the comments that this is really most relevant when a decision is being made on budget and finance, and one of my concerns in addition to the chilling effect and all of that is just the practicality.

Subcommittee, what's the definition of that? If for example one of the standing committees of Judicial Council having a conference call and say it's RUPRO and they are looking for modifying a rule for juvenile justice court Anderson issue of law, that is decided amongst members of the committee that maybe two people should go off and take a look at what other jurisdictions are doing and say a couple judges are asked to report back, is that a subcommittee? And if it is a subcommittee then those two people need to provide notice of when they are meeting and need to make and open up their communications to the public and that's where I have a concern in addition to the chilling effect I think there's real practicality concerns. The State Bar Board of Governors went through a very similar exercise two years ago when it was specifically directed by the Legislature to report and put together a task force and prepare a comprehensive report on how the State Bar can be more accountable to the public we found it very difficult with regard to the practicality issues in the notice requirements. District application of the Brown Act would require us to put it on the website and provide notice to the public any time not just an official subcommittee or committee was meeting but even if three or four members of the committee have eight members or seven members in total is together and assessing and that the violation of the rule. I trust that they are but just to throw into the mix another concern in addition to the chilling effect and everything else also there are some practicality issues, Senator Evans?

>> I just want to express my appreciation and I spent 20 years of my life of being subject to various open meeting laws of local government and California state Legislature and it's not easy. All of our task force working group subcommittees etc. are all subject to open meeting laws and it's very difficult to be able to sometimes transect this is because it's a challenge and I appreciate the fact that everybody is struggling with this now and they also want to mention this level of transparency both as Judicial Council is operating under now and looking at operating under the future is really unprecedented, particularly for the judiciary and it is uncomfortable and they understand that it is something that's relatively new here and I thank you Chief Justice for your leadership in this area but I think it's particularly critical because especially the last few years and [indiscernible] budgets have become so tight that what we're seeing is a reduction in public trust of our institutions, and I

believe that trust cannot be restored without some level of transparency. As difficult as that is, I think in the long run it's really worthwhile and I want to express my appreciation for the struggle everyone is having right now to meet the mandates that the legislation put on you in the last year.

>> Thank you, Senator Evans.

>> I just wanted to build a little bit on Judge Walsh's comment referring to chilling. If you look it's been squarely in the middle of our considerations that without the advisory committees, all the working groups, all of the task forces, they are populated largely—not exclusively but largely—by judges and as judges. As the Chief has mentioned, we are bound by a canon of ethics, one that says it's inappropriate and we're not allowed to discuss publicly matters that are pending or impending, and the branch and council's work is so dependent upon the willing participation of so many members of the judiciary that there is a companion concern that if they think that they are being put in jeopardy during the course of their discussions violating the canons of ethics that will in turn make more difficult, to say the least, our ability to have judges of good faith come forward and continue the work that so many have done in the past. The thermophilic considerations that the canon of ethics are special to the branch we are trying and I, like Justice Miller, tend to be an optimist in life, and I do think that we are going to be able to present to the council in April a rule that has an appropriate balancing of these considerations.

>> Justice Herman and Justice So?

>> The ethical piece is a two-pronged piece. Not only are we constrained ethically from making public comment in areas of law that are pending and others that are impending in one way or another but we are also required by the canons to adjudicate and preside over cases and not put ourselves in the position of making public comment on legal issues that would make us vulnerable to having to either recuse ourselves from a particular case or being challenged any particular cases. These are important concepts that we struggle with and worked with and we're sort of in a unique position relative to those ethical constraints.

>> At the same time we are well aware of how important it is to the public that the judiciary show, needs been spent in the budget aspect of it, and I think you will see when this rule comes out that we try to balance all of that and they think we have walked the tightrope but we will make it to the other side.

>> Judge Bradley.

>> Thank you, Chief. I agree largely with everything that's been said here this afternoon. I think we should not lose sight of the fact that language that's compelled us to this point as has been said by Judge So in others comes from budget committee. We as judges are specialists I think and doing our business in public. That's what we do every day so I think the Legislature by this directive is obviously thinking the people's business includes expenditure of their resources so that has to be or should be public, and I don't think I hear anybody quarreling with that or has in principle any argument with that. What I was concerned about when I first saw the draft—I suspect it was the first draft—was that the language that was offered for the rule seemed to be awfully expensive far beyond budgetary issues. The language from the budget committee suggests access and what I thought I saw in the proposed rule was almost participation or maybe in fact participation from stakeholders or public members. I'm not sure if that's what the new or latest version of the rule will offer, but I think it's very different impact on our committees. If it simply notice access opportunity to hear as opposed to participation. I also wonder, and they know the senator said it's unprecedented, whether any other court system in the United States has a similar rule; I would be anxious to know.

>> The answer is yes and I think you'll find that the rule that we will be putting forth will be at the forefront of open meeting rules for the judiciary.

>> I appreciate that, figure, Chief.

>> Thank you, I just wanted to follow up on a comment that justices who meet regarding our decimal it. Just dissimilarity because of the nature of our canons of ethics that separate this branch of

government from other branches of government, they think that we need to be very cautious, very careful, in the way in which the rule is designed. My concern is the rule of unintended consequences. We encourage judicial officers to be active participants in these advisory groups and task forces etc. My fear is because of the concern of our restrictions—because of the canons of ethics—that we have a chilling effect and withdrawal of judicial officers and only individuals in essence representing the branch may affect staff personnel. We have certainly been criticized in the past for not actively participating and overseeing AOC staff and if we don't have judicial officers that are willing to participate in these task forces and advisory committees, we're going to be putting ourselves back at that position.

>> Thank you, Judge Bradley.

>> We would ask for a motion to recommend approval of the attached letter for January 1.

>> Chief, also move.

>> Is there a second?

>> Second.

>> No further discussion. All in favor, please they I.

>> Any opposed? Motion carries. This concludes our audiocast of the agenda items for today's business meeting. And, after a short break, we will reconvene in the Milton Marks Conference Center lower level at 4:30 p.m. for the beginning in the presentation for the 2013 Distinguished Service Awards and the Benjamin Aranda III Justice Award. For those listening, we will also reconvene here again tomorrow at 8:30 a.m. for the remainder of our business meeting agenda. See you at 4:30 p.m. in the auditorium. Thank you.

>> [Event concluded]